

DUANE SMITH 4/13/2009

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in)
his capacity as ATTORNEY)
GENERAL OF THE STATE OF)
OKLAHOMA and OKLAHOMA)
SECRETARY OF THE ENVIRONMENT)
C. MILES TOLBERT, in his)
capacity as the TRUSTEE FOR)
NATURAL RESOURCES FOR THE)
STATE OF OKLAHOMA,)
)
 Plaintiffs,)
)
 vs.) No. 05-CV-00329-GKF-PJC
)
TYSON FOODS, INC., et al.,)
)
 Defendants.)

VIDEOTAPED DEPOSITION OF DUANE SMITH,

before the undersigned Certified Shorthand Reporter,
taken on behalf of Defendant Cal-Maine Foods, at 313
Northeast 21st Street, Oklahoma City, Oklahoma,
commencing at 9:06 a.m., on April 13, 2009, pursuant
to the stipulations of the parties.

DANA L. YOUNG, RPR, CSR #01168

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1 had to carry a canoe --

2 Q. Okay.

3 A. -- over portions of it.

4 Q. All right.

5 A. And others where you couldn't hardly see
6 any rocks at all, so --

7 Q. Okay.

8 A. But those are the -- if that helps you with
9 the volume.

10 Q. All right. During -- well, back to the
11 point sources. The -- the wastewater treatment
12 plants and so forth that have pipes that go directly
13 into the Illinois River, those sources contribute
14 nutrients and bacteria 365 days a year; is that
15 correct?

16 MR. HAMMONS: Object to the form. Object
17 to the form.

18 Q. (By Mr. Sanders) Is that correct?

19 A. Yes.

20 Q. And that's during high-flow events and
21 low-flow events. Doesn't matter. They're -- day in
22 and day out they're going to be pumping stuff out of
23 that pipe, isn't it?

24 A. Yes.

25 Q. Now, in low-flow conditions, does it --

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1 does it make sense to you that the flow of the river
2 is small enough or light enough that some of
3 the nutrients and bacteria from point sources are
4 going to settle into the sediments of the river?

5 MR. HAMMONS: Object to the form.

6 Q. (By Mr. Sanders) Instead of being washed
7 down to Ten -- all the way down to Tenkiller?

8 MR. HAMMONS: Object to the form.

9 A. I understand that that happens.

10 Q. (By Mr. Sanders) Okay.

11 A. Based upon discussions from our water
12 quality staff, I understand that happens.

13 Q. All right. And you understand then that
14 when you have a big rain and you have a high-flow
15 condition after that, that the river channel is going
16 to be scoured by the rushing water; isn't that
17 correct?

18 MR. HAMMONS: Object to the form.

19 A. Potentially so, that's correct.

20 Q. (By Mr. Sanders) All right. And during the
21 high-flow event, the sediment that had settled there
22 during a low-flow event is going to be resuspended up
23 into the flow of the water; isn't that correct?

24 A. It -- it can be, yes.

25 Q. All right. And those nutrients and

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1 bacteria that had settled that came from the point
2 sources are going to be resuspended along with the
3 sediment during a high-flow event; is that correct?

4 MR. HAMMONS: Object to the form.

5 A. Yes.

6 Q. (By Mr. Sanders) All right. Then you come
7 along and you take a sample of water during a
8 high-flow event and it shows a certain amount of
9 phosphorus and a certain amount of bacteria. Does the
10 Water Resources Board know what part of that
11 phosphorus and bacteria readings that were taken from
12 a high-flow sample came from resuspended sediments
13 that -- of some -- of nutrients and bacteria that were
14 deposited by point sources?

15 MR. HAMMONS: Object to the form.

16 A. I really would refer that question to Derek
17 Smithee for the -- my understanding is that we do not
18 know exactly what that contribution is.

19 Q. (By Mr. Sanders) Okay. Do you know if any
20 other state agency knows the answer to that question?

21 A. I think that's a very difficult -- I'm not
22 aware of one that does know.

23 Q. Yeah. I think -- I think no one may know,
24 but I'm just asking you if you --

25 A. I'm not aware of it.